

The Honorable Judge Settle

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

UNITED STATES OF AMERICA,

Plaintiff,

v.

JUAN CARLOS DE LA CRUZ PIOTE,

Defendant.

NO. CR13-5470BHS

GOVERNMENT'S SENTENCING
RECOMMENDATION

The United States of America, by and through Jenny A. Durkan, United States Attorney for the Western District of Washington, and David Reese Jennings, Assistant United States Attorney for said District, files this Sentencing Recommendation and Memorandum.

Criminal Conduct

Since July 8, 2011, Homeland Security Investigations (HSI) and the FBI have been conducting an investigation of Romanian internet fraud involving the sale of vehicles. The investigation revealed that a Romanian group, headed locally by Emilian Nita, and including the businesses AUTO FINANCIAL, LLC, (owned by Mariano BLASCO GUTIERREZ), MGA ENGINES, LLC (owned by Jose Antonio GANDULLO MORCILLO), and GMC AUTOS, LLC, (owned by JUAN CARLOS DE LA CRUZ PIOTE) committed hundreds of thousands of dollars in internet wire fraud.

1 The essence of the scheme was to fraudulently advertise items for sale on the
2 Internet, and to cause victim/buyers to transmit money over interstate wires. Victims
3 were typically instructed to send money care of Amazon Payments, or PayPal, but in fact
4 the money went to bank accounts opened by people like defendant PIOTE. To date, the
5 scheme has netted a total of more than \$1 Million in southern California and the Western
6 District of Washington. Specifically, investigators found \$353,850.00 in wire transfers to
7 the bank account of AUTO FINANCIAL, LLC, approximately \$96,352.00 in wire
8 transfers to the bank account of MGA ENGINES, LLC, and approximately \$251,990 in
9 wire transfers to the bank account of GMC AUTOS, LLC.

10 PIOTE entered the U.S. on June 16, 2011, and registered with the State of
11 Washington as the agent of the business "GMC AUTOS, LLC"—established exactly one
12 day after he entered the U.S. His role in the conspiracy was to open bank accounts so the
13 conspirators could collect and distribute money received through the scheme. PIOTE
14 succeeded in opening business bank accounts in the name of GMC AUTOS, LLC, at the
15 following three banks, all of which are located in the Western District of Washington:

- 16 i. Bank of America, 12727 SE 38th St., Bellevue, WA 98006
- 17 ii. Chase Bank, 14400 124th Ave. NE., Kirkland, WA 98034
- 18 iii. Wells Fargo Bank, 13505 NE. 175th St., Woodinville, WA 98072

19 Michelle Petrovich was the Assistant Vice President and Branch Manager at the
20 Key Bank branch located at 7917 Center Boulevard SE, Snoqualmie, Washington. She
21 was working at Key Bank's Belgate branch in Bellevue, WA on July 6, 2011, when two
22 men, later identified as GANDULLO MORCILLO and PIOTE, entered the Belgate
23 branch to set up a checking account. The two men wanted an account on which they
24 could "get checks and write checks." PIOTE, speaking for GANDULLO MORCILLO,
25 explained that the checking account was for GANDULLO MORCILLO's business (MGA
26 ENGINES, LLC). (Ms. Petrovitch said that whenever the bank had communication
27 problems with GANDULLO MORCILLO, GANDULLO MORCILLO would make a
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1 call, and Mr. PIOTE would soon arrive to assist with the bank transaction or with
2 communication with the bank employees.)

3 On July 25, 2011, the Redmond Police Department arrested conspirator BLASCO
4 GUTIERREZ at the Banner Bank branch located at 202 Kirkland Ave. NE, Kirkland,
5 Washington. BLASCO GUTIERREZ was doing essentially the same thing as was
6 GANDULLO MORCILLO and PIOTE. BLASCO-GUTIERREZ was arrested for theft
7 involving two fraudulent wires, totaling \$81,350, sent to the account of AUTO
8 FINANCIAL, LLC. The senders of the wires were from Minnesota and South Carolina,
9 and both reported the transactions as fraudulent because the senders never received the
10 vehicles they had purchased over the internet.

11 BLASCO GUTIERREZ made bail but immediately fled the United States.
12 Coconspirators NITA and PIOTE helped BLASCO GUTIERREZ make his bail. An
13 attorney told investigators on August 5, 2011, that two Romanians, later identified as
14 Emilian NITA and JUAN CARLOS DE LA CRUZ PIOTE, came to him and said they
15 were "roommates and good friends" of BLASCO-GUTIERREZ. The attorney received
16 an initial payment of \$500 from them for BLASCO-GUTIERREZ' bond, and NITA later
17 provided \$10,000 in cash.

18 On August 21, 2011, Customs and Border Protection (CBP) Officers stopped
19 PIOTE at SeaTac Airport to conduct an outbound currency inspection. PIOTE was about
20 to board Delta Airlines flight 232 to Amsterdam. He was carrying approximately \$6,500
21 in cash in his carry-on luggage. He stated he entered the U.S. with approximately \$9,500
22 in currency. A border search of PIOTE's checked bag uncovered a travel itinerary for DE
23 LA CRUZ PIOTE, BLASCO GUTIERREZ, and GANDULLO MORCILLO, for a June
24 11, 2011 flight from Madrid, Spain, to Bucharest, Romania. The search also uncovered
25 Chase Bank blank checks, with routing #325070760 and bank account 3018, with no
26 payee information; Chase Bank blank checks with routing #325070760 and account
27 985201920 in the name of Juan Carlos DE LA CRUZ, 227 Bellevue Way NE., #35,
28 Bellevue, WA (a UPS Store address); Chase Bank blank checks with routing #570201025

1 and account 3028860025; and miscellaneous business cards, including AUTO
2 FINANCIAL, LLC (owned by BLASCO GUTIERREZ).

3 PIOTE told agents and CBP Officers that he entered the United States on June 16,
4 2011, from Spain, for a vacation. Before leaving Spain, however, friends in Spain told
5 him that he could start a business in the United States and work here. (In truth and fact,
6 PIOTE's flight to the U.S. originated from Romania, not Spain.) PIOTE claimed he
7 started his business paperwork online while in Spain, and that an acquaintance in the
8 U.S., known to him only as Tony, assisted him with the business paperwork. After
9 arriving in Washington, he met with Tony in Bellevue, Washington, at a club, and a
10 couple times at the DANUBE BISTRO in Bellevue, Washington.

11 PIOTE said his business plan for GMC AUTOS, LLC, was to act as an
12 intermediary, where he would receive a profit for placing the buyer and seller in contact
13 with each other. He also planned to act as the money transferor. He explained that his
14 business, GMC AUTOS, LLC, had no actual physical location because he did not need
15 one: he found cars online, or at used car stores, and he used a computer to post them for
16 sale on the internet. He cited, as an example, that if person A was selling an RV, and if
17 person B wanted to buy this RV, then person B would pay PIOTE. PIOTE would then
18 keep a percentage of the funds, and then give the remaining funds to person A. PIOTE
19 would not deal with the vehicle itself, the vehicle title, registration documents, or with
20 any other detail. He claimed he only put people in contact with one another, and then
21 provided an address where he could collect money.

22 PIOTE told agents (as he was leaving the country with no set plans to return to the
23 United States), that his business was currently "up in the air," and that he was still
24 working on delivering vehicles to buyers. He admitted that there was one person who did
25 not receive the vehicle after paying him, and he claimed he returned the entire purchase
26 price to the buyer. When shown a picture of himself and GANDULLO MORCILLO
27 entering a bank together, PIOTE stated that GANDULLO MORCILLO had paid him to
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1 go to the bank a couple times with him because he was having issues with transfers and
2 opening bank accounts.

3 In fact, PIOTE never dealt with sellers because there were no sellers and there
4 were no cars for sale. PIOTE never sent money to any sellers, and instead forwarded
5 proceeds (sent by duped buyers) to bank accounts in Romania. In truth, PIOTE offered
6 no cars for sale, and the business he described made no business sense. In truth and fact,
7 none of PIOTE's transactions resulted in a buyer (i.e., sender of money) actually
8 receiving a vehicle, or in a seller actually receiving proceeds.

9 The activity in PIOTE's bank accounts fails to support his explanation of his
10 business (or any other legitimate business). He received money from buyers, then sent
11 the money to Romania or withdrew it as cash. There is no indication in the bank records
12 that PIOTE ever transferred money to sellers. Moreover, the victims never dealt with
13 PIOTE, and he had no discernable contact with anyone regarding any of the listings.
14 Victims will testify that they were instructed to send money, by a seller, to an account
15 care of "Amazon Payments or PayPal." In fact, the accounts to which the victims sent
16 their money had nothing to do with Amazon Payments or PayPal. In truth, the accounts
17 were simply bank accounts in the names of PIOTE or other Romanian coconspirators.

18 **Guideline Calculations**

19 The United States concurs with the probation office's calculations of the
20 guidelines.

21 **Recommendation**

22 This scheme involved naked theft, with the attendant fraud amounting to little
23 more than a fig leaf. PIOTE's case is directly related to Case Number CR11-5413BHS,
24 *United States v. Emilian Nita*. Nita was a manager in the same scheme in which
25 defendant PIOTE participated. This court sentenced NITA to 42 months imprisonment.
26 PIOTE participated at a lower level, within the hierarchy of the same scheme, than did
27 NITA; thus PIOTE's ultimate sentence should reflect that difference. In fact, the
28 presentence report holds PIOTE accountable for only the theft in which he was directly

1 involved, and the report further fails to aggravate PIOTE for being a manager (like
2 NITA). Nonetheless, the report does not demote PIOTE to only a minor role, since his
3 involvement was integral to the scheme's success. Probation ultimately recommends a
4 sentence of 36 months for PIOTE, which is both reasonable and appropriate.

5 In determining the proper sentence in this case, the United States urges the court to
6 consider the nature of the crime and the great harm caused to the victims in this case. It
7 is altogether too easy to instead focus on comparing PIOTE's role in the scheme with
8 NITA's criminal conduct. In fact, PIOTE would not have pled guilty, and could not have
9 been convicted, had he been unaware he was a working cog in a scheme designed to steal
10 from innocent buyers. None of the people harmed by PIOTE's conduct were reckless,
11 careless, or somehow deserving of the harm that befell them. There was absolutely
12 nothing defensible about the scheme, nothing of collateral value that flowed from it, and
13 nothing left from it to ever be returned to the many victims. No insurance will cover the
14 victims' loss, and no hope of restitution will ever accompany the judgment this court will
15 sign.

16 PIOTE and his coschemers took advantage of those things that make it easy to do
17 business in the United States, and further took advantage of the trust built by the years of
18 hard work it took to build internet commerce. Banks make it easy for individuals to open
19 accounts and to use them to receive and send money. One might argue that, if banks
20 would only take the precautions that law enforcement might encourage, or that hindsight
21 in cases like this seems to warrant, then schemes like this would be more difficult to
22 commit. Banks cannot, however, treat every customer as a potential criminal, nor should
23 they have to do so. Moreover, internet businesses have labored for years to encourage
24 consumers to use and to shop on the internet. It is now common to order goods and
25 services from a computer, and to trust that a legitimate business will respond to our
26 emails and requests for goods.

1 Some companies, such as Amazon and PayPal, have developed strong reputations
2 for reliability and security. When these names are invoked, people presume legitimacy.
3 When told that Amazon is involved, or that payments can be sent through PayPal, the
4 hard-earned, golden reputations of these companies cause people to trust that their
5 transactions will be safe, that consumers will not be cheated, and that they are dealing
6 with substantial citizens of the internet.

7 Defendant PIOTE and his coschemers devised a scheme that capitalized on all the
8 work that has gone into doing business on the internet. The schemers fraudulently
9 cloaked themselves in trust by associating—by fraudulent impersonation--with legitimate
10 companies, federally insured banks, and widely-respected financial institutions. They
11 succeeded in stealing large sums from ordinary, middle-class people, all of whom were
12 pursuing the dream of owning a boat, car, or recreation vehicle. One can only imagine
13 the pain suffered by victims who learned that the vehicle they paid for and hoped to
14 receive did not exist, or did not belong to the so-called seller, and that they had no chance
15 of getting a refund.

16 It is relatively easy to compute the dollar loss to the immediate victims in this
17 case. It is nearly impossible to predict the chilling effect and consequential loss in
18 commerce that flowed from the pervasive nature of this fraud. How many vehicles failed
19 to sell because people no longer trusted internet advertising after learning of this fraud?
20 How many sales did not happen because people feared that a company calling itself
21 Amazon, or associating with Amazon, might not be real? Although it is difficult to
22 quantify the additional damage, there is no question but that the fraud against the buyers
23 flooded into other areas, like a giant wave after an earthquake.

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1 Any sentence defendant PIOTE receives, therefore, must reflect the seriousness of
2 his offense, and must serve to deter others who might be lured into the United States to
3 commit the same or similar offenses. For these reasons, a sentence of 36 months is
4 appropriate and fitting. This sentence will send a message to others like Mr. PIOTE that
5 there will be a price for this fraud.

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7 DATED this 21st day of April, 2014.

8 Respectfully submitted,

9 JENNY A. DURKAN
10 United States Attorney

11 /s/David Reese Jennings
12 DAVID REESE JENNINGS
13 Assistant United States Attorney
14 United States Attorney's Office
15 1201 Pacific Avenue, Suite 700
16 Tacoma, Washington 98402
17 Telephone: (253) 428-3800
18 Facsimile: (253) 428-3826
19 E-mail: David.R.Jennings@usdoj.gov
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CERTIFICATE OF SERVICE

I hereby certify that on April 21, 2014, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the attorney of record for the defendant.

/s/Kelly M. Shirkey
KELLY M. SHIRKEY
Legal Assistant
United States Attorney's Office
1201 Pacific Avenue, Suite 700
Tacoma, Washington 98402
Phone: 253-428-3800
FAX: 253-428-3826
E-mail: Kelly.Shirkey@usdoj.gov